

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

CLYDE O. MONTGOMERY,

Petitioner,

v.

CIVIL ACTION NO. 5:08-cv-00094

T. R. CRAIG, et al.,

Respondents.

ORDER

The Court has reviewed Petitioner's Application to Proceed *in Forma Pauperis* [Docket 1] and Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus by a person in State or Federal Custody [Docket 2], both filed on February 11, 2008.

By Standing Order [Docket 3] entered on February 11, 2008, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On October 25, 2010, the Magistrate Judge submitted Proposed Findings and Recommendation ("PF & R") [Docket 6] wherein it is recommended that this Court deny Petitioner's Application to Proceed *in Forma Pauperis*, dismiss his Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus and remove this matter from the Court's docket.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and Petitioner's right to appeal this

Court's order. *See Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir.1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir.1984). Objections to the PF & R were due by November 11, 2010. The Court has been informed that Petitioner was released on July 15, 2008, and that the PF & R which was sent to him was returned as undeliverable and not attempted again due to there being no current address available. Petitioner has not filed objections or made any further efforts to contact the Court.

Inasmuch as Petitioner's requested relief was to be released from custody, and lacking support to the contrary, the Court finds that the issues raised in his petition are moot. Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the Proposed Findings and Recommendation [Docket 6]. The Court **ORDERS** that Petitioner's Application to Proceed *in Forma Pauperis* [Docket 1] be **DENIED**. The Court further **ORDERS** that Petitioner's Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus by a Person in State or Federal Custody [Docket 2] be **DISMISSED** and that this matter be **REMOVED** from the Court's docket.

The Court has additionally considered whether to grant a certificate of appealability. *See* 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this Court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683-84 (4th Cir.2001). The Court concludes that the governing standard

is not satisfied in this instance. Accordingly, the Court **ORDERS** that a certificate of appealability be **DENIED**.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: November 24, 2010


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA